

TEXT AMENDMENTS TO THE ZONING CODE
(Related to Walls, Fences and Retaining Walls)

[+Bracketed/Underscored Material+] = New Material

[-Bracketed/~~Strikethrough~~ Material-] = Deletion

+ **Bold** Material+ = Amended Since EPC January 8, 2004 hearing

Amend Section § 14-16-2-6 R-1 RESIDENTIAL ZONE.

This zone provides suitable sites for houses and uses incidental thereto in the Established and Central Urban areas.

(A) *Permissive Uses.*

- (1) House, one per lot.
- (2) Accessory use:
 - (a) Accessory structure (noncommercial) for garage, storage, recreation, hobby, greenhouse, bathhouse, or for the keeping or housing of domestic pets, other allowed animals or agricultural products.
 - (b) Agricultural animal keeping, for noncommercial purposes, as follows: rabbits and similar animals, poultry, pigeons. Cows, horses, goats or sheep, provided the number of animals does not exceed one cow or horse for each 10,000 square feet of open lot area, or one sheep or goat for each 4,000 square feet of open lot area, or equivalent combination, provided the lot has an area of at least 21,780 square feet. Animals shall be so controlled that they cannot graze on any other premises. Animals under four months old are not counted.
 - (c) Garage and yard sale, provided:
 1. No more than one sale at a given dwelling in any 12-month period. The duration of the garage or yard sale shall not exceed three consecutive days.
 2. No items shall be purchased for a garage or yard sale for the purpose of resale; items shall be of the type normally accumulated by a household.
 3. One non-illuminated sign not exceeding six square feet in area shall be permitted. The sign shall pertain to the garage or yard sale only and shall be located on the premises. The sign shall be permitted for the three-day period only.
 - (d) Antenna (noncommercial), up to 65 feet in height.
 - (e) Family Care facility, provided there is no sign and only members of the residing family serve as provider of care.
 - (f) Family day care home, with any sign limited as for home occupations, provided:
 1. Only members of the residing family serve as providers of care.
 2. Group composition shall not exceed six children; this limit does not consider the resident provider's children who are age six or more.

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3. The activity is licensed by the state as a family day care home.
- (g) Home occupation and sign identifying the activity, provided:
 1. The activity is clearly incidental and secondary to use of the premises for a dwelling.
 2. Only members of the residing family are employed.
 3. No stock in trade is manufactured, displayed, or sold on the premises, except a small stock of art objects and custom sewing created by a resident of the dwelling is allowed.
 4. All business activities are conducted entirely indoors.
 5. No more than 25% of the floor area of the dwelling is devoted to the home occupation. No more than 5% of the floor area of the dwelling is devoted to storing stock in trade.
 6. There is no external evidence of the activity, including, but not limited to, the parking of commercial vehicles, inordinate vehicular traffic, outside storage, noise, dust, odors, noxious fumes, or other nuisances emitted from the premises.
 7. Health care (including physicians, nursing homes, massage, and the like) shall not be considered a permissive home occupation.
 8. One related on-premise sign is permitted, provided:
 - a. It does not exceed one square foot in area.
 - b. It is a non-illuminated wall sign.
- (h) Parking of a noncommercial vehicle incidental to another use permitted in this zone, provided all motor vehicles, both noncommercial and commercial, which are not parked inside a building are operative and are not wholly or partially dismantled, and as provided elsewhere in this section. Inoperative and dismantled vehicles shall be governed by the provisions of Chapter 8, Article 5. This section shall not apply to the parking of commercial vehicles parked on a temporary basis for the sole purpose of providing a commercial service incidental to a residential use such as delivery, repair and utility installation and/or repair. The parking of a vehicle meeting the definition for recreational vehicle, except for size, is not deemed incidental to another use permitted in this zone.
- (i) Recreational vehicle, boat, or boat-and-boat-trailer parking as follows:
 1. Inside parking;
 2. Outside parking in the side yard or the rear yard, provided no part of the unit extends over the public sidewalk; or
 3. Outside parking in the front yard, provided:
 - a. The unit is parked perpendicular to the front curb;
 - b. The body of the recreational vehicle or boat is at least 11 feet from the face of the curb; and
 - c. No part of the unit extends over the public sidewalk.
 4. Parking is permitted only if the unit, while parked in this zone, is:
 - a. Not used for dwelling purposes, except one recreational vehicle may be used for dwelling purposes for a maximum of 14 days in any calendar year on any given lot. Cooking is not permitted in the recreational vehicle at any time. Butane or propane fuel shall not be used.
 - b. Not permanently connected to sewer lines, water lines, or electricity. The recreational vehicle may be connected to electricity temporarily for charging batteries and other purposes if the receptacle and the connection from the recreational vehicle has been inspected and approved by the city; this connection must meet the Electrical Code of the city and a city electrical permit must be obtained for all such installations. The individual taking out the permit

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must call for an inspection of the electrical wiring when ready for inspection. Standard inspection fees will be charged, except no inspection shall be made for less than a \$3.50 fee.

c. Not used for storage of goods, materials, or equipment other than those items considered to be a part of the unit or essential for its immediate use.

5. Notwithstanding the provisions of divisions 3. and 4. above, a unit may be parked anywhere on the premises during active loading or unloading, and use of electricity or propane fuel is permitted when necessary to prepare a recreational vehicle for use.

6. If the dwelling unit on the lot is under construction, the provisions of division (2)(k)3. of this subsection shall control, rather than the provisions of (2)(i)1. through 4. of this division (A).

7. No recreational vehicle or boat may be parked in a clear sight triangle.

(j) Sign, provided that it meets the requirements of (2)(f)8. of this division (A) or [§ 14-16-3-5](#) of this Zoning Code.

(k) Trailer parking as follows:

1. Inside parking if all provisions of (2)(h)4. of this division (A) are met;

2. Outside parking in the side yard or the rear yard of cargo trailers of less than 2,500 pounds carrying capacity.

3. As a dwelling connected to any utilities during construction of a building on the premises, for a period of up to six months or until the construction is completed, whichever comes first. The six-month period shall begin to run from the date on which a building permit is issued for a dwelling unit on the same lot. The body of the trailer shall be set back at least five feet from any lot line and eight feet from the dwelling unit under construction.

4. Notwithstanding the other provisions of this subsection, a trailer may be parked anywhere on the premises during active loading or unloading.

(l) Hobby breeder, as defined by and under a permit pursuant to Chapter 9, Article 2, Animal Control.

(3) Community residential program except not either Community residential corrections program or Community residential program for substance abusers: up to ten client residents provided that the standards of [§ 14-16-3-12](#) of this Zoning Code are met.

(4) Growing plants, noncommercial.

(5) Private Commons Development, not less than two acres in area, if allowed in a Sector Development Plan or area plan governing the site.

(6) Public park.

(7) Public school, including caretaker's mobile home.

(8) Public utility structure, provided its location is in accord with an adopted facility plan and a site development plan for building permit purposes has been approved by the Planning Commission.

(9) Real estate office and an incidental sign in connection with a specific development, provided it is not used as living quarters during the time it is used as an office, and further provided that it is limited to a period of one year unless the time is extended through approval by the Zoning Enforcement Officer. A site plan and floor plan approved by the Zoning Enforcement Officer is required prior to establishment of this activity.

(10) Wireless Telecommunications Facility which is concealed or located on a public utility structure, provided the requirements of [§ 14-16-3-17](#) of this Zoning Code are met.

(11) Family Housing Development, as defined by the Family Housing Development Ordinance, Section 4.

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(B) Conditional Uses.

- (1) Accessory living quarters.
- (2) Animal keeping, noncommercial, the species being other than those which are permissive in this section.
- (3) Carport in the required front or side setback area, provided:
 - (a) No part is within three feet of a property line, other than a right-of-way line.
 - (b) No building wall is ever built within a required setback area.
 - (c) The specific carport proposed is in harmony with the building site.
- (4) Construction office in connection with a specific construction project provided it is limited to a period of one year unless the time is extended through a new conditional use.
- (5) Family day care home, with any sign limited as for home occupations. There shall be an outdoor play area adequately enclosed with a wall or fence. At least one member of the residing family shall serve as a provider of care. The activity shall be licensed by the state as a family day care home. (See also the permissive use provisions.)
- (6) Health care, including physicians, massage, therapy, etc. (but not nursing homes), as physically limited under home occupations.
- (7) Public library.
- (8) Public utility structure which is not permissive.
- (9) Recreational facility (non-profit), such as community center, swimming pool, tennis club.
- (10) Second kitchen within a house, provided:
 - (a) The kitchen is incidental to occupancy of the entire house in common by members of one family (as herein defined); that, in fact, there would not be two separate and distinct dwelling units, each exclusively occupied by some family members.
 - (b) If such use is approved, the Zoning Hearing Examiner shall record the terms of the action with the County Clerk, together with a signed acceptance of such terms by the owners. The terms of the city action shall run with the land.
- (11) Shade structure including a covered patio, a gazebo, a pergola, a ramada or similar roofed structure, either detached or attached, in the required rear yard setback area, provided:
 - (a) No part is within three feet of a property line.
 - (b) No building wall is ever built within the required setback area.
 - (c) No more than 50% of the required rear yard setback area is covered by a roof.
 - (d) The structure shall not exceed 12 feet in height nor shall it exceed the height of the principal building on the site.
 - (e) A second floor deck is prohibited.
 - (f) The specific structure proposed is in harmony with the building site and with surrounding sites.
- (12) Storage structure or yard for equipment, material, or activity incidental to a specific construction project, provided it is of a temporary nature and is moved after the specific construction project is completed or work on the project has been dormant for a period of six or more months, and further provided that it is limited to a period of one year. Incidental signs may also be approved.
- (13) Walls, fences, and retaining walls, **[+where height is normally limited to three feet, may be+] up to [+five+] feet high [+within the setback area less than ten feet from the property line, and up to six feet high when ten or more feet from the property line+],** provided:

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(a) It is attractive and in harmony with its site, the style of the wall or fence blending architecturally with the adjacent residences and with the general streetscape, [~~it is consistent with the requirements of Section 14-16-3-19~~], and it is at least one of the following:

1. At least 11 feet from the public sidewalk or planned public sidewalk location, or 14 feet from the edge of the street pavement, whichever is more restrictive;
 2. The portion of the wall or fence which is more than three feet above the adjacent curb top is essentially an open fence which permits good visibility through it; or
 3. On a corner lot, the rear yard of which is contiguous to the front yard of a residentially-zoned lot, and the wall or fence is not in the required front yard setback.
- (b) The Zoning Hearing Examiner shall not approve a wall or fence unless the Traffic Engineer finds that the specific plan approved would not be a hazard to traffic visibility.
- (c) Wire fences over three feet high and in setback areas are not normally considered to be in harmony with a residential streetscape.

§ Amend Section 14-16-2-28 OVERLAY ZONES.

The following overlay zones apply to areas where they are mapped in addition to the provisions of another zone. Where the provisions of overlay zones conflict with the provisions of another section of this Zoning Code, the provisions of the overlay zone shall prevail.

(A) *WO Wall Overlay Zone.*

(1) General. The overlay zone may be considered for land placed in any residential zone where, due to special planning considerations or external influences, high walls or fences are reasonable and proper even in the front yard.

(2) Control. Front yard wall and fence heights shall be set by the Planning Commission; maximum height in feet shall be stated in the resolution and on the zone map: e.g., R-1/WO-4. However, no wall or fence shall violate the clear sight triangle nor shall a wall or fence over three feet high be closer than 11 feet to the junction of a driveway and a public sidewalk or planned public sidewalk location. [~~All wall designs must comply with requirements of Section 14-16-3-19, except for height regulations as determined by the Planning Commission.~~]

(3) Procedures. The wall overlay zone is mapped through the regular rezoning process.

§ 14-16-3-3 SUPPLEMENTARY HEIGHT, AREA, AND USE REGULATIONS.

The following regulations override conflicting regulations elsewhere in this Zoning Code.

(A) *Height Regulations.*

(1) Height regulations in this Zoning Code do not apply to:

- (a) Belfries.

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- (b) Church spires and towers.
- (c) Flag poles.
- (d) Flues.
- (e) Monuments.
- (f) Ornamental towers and spires.
- (g) Religious signs as specified in § 14-16-3-5(D)(4) of this Zoning Code.

(2) A height variance may be approved for the following structures even though there is only a minimal showing as to exceptional physical condition:

- (a) Chimneys.
- (b) Conveyors.
- (c) Cooling towers.
- (d) Cupolas and domes.
- (e) Elevator housings.
- (f) Mechanical equipment and its screening.
- (g) Observation towers.
- (h) Penthouses.
- (i) Smoke enclosures.
- (j) Smoke stacks.
- (k) Solar Collectors
- (l) Stage towers or scenery lofts.
- (m) Tanks.

(n) Walls and fences which are normally allowed to be up to eight or ten feet high, measured from the lower side, but because of a retaining wall a variance is required to allow the wall or fence to be three feet high measured from the higher side.

- (o) Water Towers.

(3) A setback variance may be approved for the following structures even though there is only a minimal showing as to exceptional physical condition:

- (a) Solar collectors.

(b) Houses located on lots created when side-yard setback requirements were less severe and the lot's dimensions make it unreasonable to require the current side-yard setback requirements.

(4) **[+ Walls, Fences, Retaining Walls - See Section 14-16-3-19+] [- Walls, Fences, Retaining Walls.**

~~(a) Wall or fence height: A wall, fence, retaining wall, or vertical combination of these in a residential zone may be built within a required setback, provided:~~

~~1. It does not exceed eight feet in height above the lowest grade on the lower side within the required side or rear yard or three feet in height above the lowest grade on the lower side within the required front yard.~~

~~2. Where property is contiguous to non-residential property, it may be erected to a maximum height of ten feet above the lowest grade on the residential side except in the required front yard setback.~~

~~3. On a corner lot, the rear yard of which is contiguous to the front yard of a residentially-zoned lot, a wall, fence, retaining wall, or vertical combination of these may not exceed three feet in height above the lowest grade on the lower side within ten feet of the street side right-of-way line. However, where approved, a conditional use may approve a higher wall or fence.~~

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~~4. On a lot where the rear lot line abuts a public street right-of-way and the lot's rear yard is contiguous to the front yard of another residentially-zoned lot, a wall, fence, or vertical combination of these may not exceed three feet in height above the lowest grade on the lower side within 20 feet of the rear right-of-way line; however, this setback is reduced to 15 feet if 15 feet is the normal front-yard setback requirement in the residential zone contiguous to the rear lot.~~

~~(b) A wall, fence, retaining wall, or vertical combination of these in a non-residential zone is not limited as to height except:~~

~~1. Within five feet of public street right-of-way, where they shall not exceed three feet in height above the lowest grade on the street side; and~~

~~2. If a wall or fence plus retaining wall abutting a residential zone would have an effective height of over eight feet above the lowest grade on the residential side, the Planning Director shall decide the required height; such decision shall be made by the same process required for a conditional use.~~

~~(c) No wall, fence, or retaining wall shall be erected in the clear sight triangle unless its type and location is approved by the Traffic Engineer based on a finding that it would not be a traffic hazard. -]~~

Remainder of this section is unchanged

ADD NEW SECTION [+ 14-16-3-19 General HEIGHT AND Design Regulations for Walls, Fences and Retaining Walls]

For review purposes only: Height regulations have been moved from the Supplementary, Height, Area and Use Regulations, Section 14-16-3-3 to this section (1), (2) & (4).

[+(A) Height Regulations+]

[+ (1) A wall, fence, retaining wall, or vertical combination of these in a residential zone may be built within a required setback, provided:

(a) It does not exceed eight feet in height above the lowest grade on the lower side within the required side or rear yard or three feet in height above the lowest grade on the lower side within the required front yard.

(b) Where contiguous to non-residential property, it does not exceed ten feet in height above the lowest grade on the residential side except in the required front-yard setback.

- (c) On a corner lot, the rear yard of which is contiguous to the front yard of a residentially-zoned lot, a wall, fence, retaining wall, or vertical combination of these does not exceed three feet in height above the lowest grade on the lower side within ten feet of the street side right-of-way line. However, a conditional use may be approved for a higher wall or fence.
 - (d) On a lot where the rear lot line abuts a public street right-of-way and the lot's rear yard is contiguous to the front yard of another residentially-zoned lot, a wall, fence, or vertical combination of these does not exceed three feet in height above the lowest grade on the lower side within 20 feet of the rear right-of-way line; however, this setback is reduced to 15 feet if 15 feet is the normal front-yard setback requirement in the residential zone contiguous to the rear lot.
 - (e) A wall, fence, retaining wall, or vertical combination of these in a required setback that faces a public street right-of-way, park, open space, or designated trail shall not exceed six feet in height above the lowest grade on the public property side, except:
 - 1. Any combination of a wall, fence and retaining wall height along the required side or rear yard that exceeds six feet on the public side in order to retain higher ground on the private property side may be constructed up to eight feet in height; such wall may not exceed six feet in height from the grade on the private property side of the wall. The design of this wall combination shall include at least two of the facade design treatments specified in Section 14-16-3-19 (C) (1) (b) and the design shall be consistent with the remainder of this section;
 - 2. A wall, fence and retaining wall or a combination of these shall have no segment rising more than six feet in height visible from the public street right-of-way. A minimum horizontal distance of four feet shall separate the height segments. The top-most segment may be constructed up to eight feet in height provided the wall does not exceed six feet from the grade on the private property side of the wall. Such wall combination shall include at least two of the facade design treatments specified in Section 14-16-3-19 (C) (1) (b) and the design shall be consistent with the remainder of this section.
- (2) A wall, fence, retaining wall, or vertical combination of these in a non-residential zone is not limited as to height except:

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- (a) Within five feet of public street right-of-way, where they shall not exceed three feet in height above the lowest grade on the street side; and
 - (b) If a wall or fence plus retaining wall abutting a residential zone would have an effective height of over eight feet above the lowest grade on the residential side, the Zoning Hearing Examiner shall decide the required height through a conditional use.
- (3) No wall, fence, or retaining wall or vertical combination of these shall be erected in the clear sight triangle unless its type and location are approved by the Traffic Engineer based on a finding that it would not be a traffic hazard. +]

[+(B) Design Regulations. These design regulations apply to the side of all walls, fences, retaining walls or a vertical combination of these (the “wall”) that face: arterial, collector, major local public street rights-of-way; a public park, open space, or designated trails (the “public side”); and, other local public street rights-of-way where cumulative width or length of lots in a block is greater than 300 feet; In addition, these design regulations apply to walls that require a special exception.

(1) Walls shall contain variation in layout, façade surface, and / or pattern of openings, materials, texture and color.

(a) Layout:

1. The layout shall incorporate at least one of the following features to break the massing of the wall:

- a. Indentations or off-sets on each public side, a minimum of 16 inches per lot, at intervals that shall not exceed three lots;
- b. Meanders, having curves with a minimum distance of four feet between the outer surfaces of the wall; the outer most point or tangent of each curve at intervals no greater than 80 feet;
- c. Vertical pilasters or decorative columns with a minimum projection of two inches from the public side of the wall surface at intervals of no more than 20 feet in length.

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(b) Façade:

1. Façade design along the public side shall comply with at least one of the following, and the façade design elements shall be distributed throughout the length of the wall:

- a. Openings, at least five percent (5%) of the wall façade surface, constructed into the façade or created by using see-through pattern blocks, tubular steel or wrought iron bars, wood or other grillwork;
- b. Variation in the top of the wall, such as stepping down and /or up vertically within the Height Regulations (A) (3) of this section. The normal stepping of the wall to accommodate grade change does not satisfy this requirement;
- c. A variety of materials, texture or color on at least twenty (20%) percent of the wall façade surface;
- d. A continuous overhang cap along the length of the wall projected at least two inches from the public side face of the wall;
- e. A variety of living shrubs, trees and/ or vines covering or overhanging at least 1/3 of the length of a wall in conjunction with a streetscape/landscape maintenance agreement between the City and the adjoining community association, executed at the DRB.

(c) Materials & Texture

1. Acceptable materials include but are not limited to stucco over concrete masonry units (CMU) or other structural materials; stabilized adobe; split face blocks; slump blocks; bricks; stone; glass blocks; curved interlock blocks; wood; tubular steel; wrought iron bars; other grill work; or a combination of these materials. Exposed smooth-faced gray-colored CMU blocks may constitute no more than 50 percent of the wall façade.

2. Razor ribbon, barbed wire or similar materials are prohibited in and abutting residential zones, and shall not be visible from a public street right-of-way in non-residential zones except in C3, IP, M-1, M-2 or corresponding zones.+]